

**CONSERVATION EASEMENT AGREEMENT  
(Preservation of Flood Storage)**

THIS CONSERVATION EASEMENT AGREEMENT is entered into as of the 31<sup>st</sup> day of Oct, 2003, by and between Doug Schmidt Construction, Inc., a Nebraska corporation ("Owner") and the City of Lincoln, Nebraska ("City").

**RECITALS**

**I.**

Owner is the owner in fee simple of Lot 1, except the south 7.0 feet thereof, Fairway Addition, Lincoln, Lancaster County, Nebraska ("Easement Area"). Said Easement Area is more particularly described on Attachment A, attached hereto and incorporated herein by reference.

**II.**

The City is authorized to accept and hold said conservation easement under the terms of this Agreement and the Conservation and Preservation Easements Act.

**III.**

The proposed acquisition of the Conservation Easement has been submitted to the Lincoln-Lancaster County Planning Commission pursuant to the provisions of Neb. Rev. Stat. § 76-2,112 for review and comments regarding the conformity of the proposed acquisition to the Lincoln-Lancaster County Comprehensive Plan and said Commission has found that the Conservation Easement is in conformance with said Plan.

**IV.**

The City Council of the City of Lincoln, Nebraska, has approved and accepted this Conservation Easement after duly considering the recommendations of the Lincoln City-Lancaster County Planning Commission and has authorized the Mayor to execute this Agreement on behalf of the City.

NOW, THEREFORE, in consideration of the mutual value to the Owner and City, and to encourage and preserve the tree masses and floodplain associated with a drainage way, the City and Owner agree as follows:

1. **Grant of Conservation Easement.** Owner hereby creates, establishes, grants, and conveys to City for its benefit and the benefit of the public a conservation easement over the Easement Area to preserve the tree masses, drainage way and floodplain within the Easement Area and to restrict development of the Easement Area subject to the following terms and conditions:

A. The following uses and practices, although not an exhaustive recital of the inconsistent uses and practices, are inconsistent with the purposes of this Conservation Easement and shall be prohibited:

- i. Construction or placing of buildings, camping accommodations, or mobile homes, fences, signs, billboard or other advertising material, or any other structure;
- ii. Filling, excavating, dredging, mining or drilling, removal of top soil, sand, gravel, rock, minerals, or other materials;
- iii. Building of roads, or changing in the topography of the land in any manner excepting the maintenance of foot trails or any work requested by the City;
- iv. Dumping of ashes, trash, garbage, or other unsightly or offensive material;
- v. Changing the topography of the land by placing of soil or other substances or materials such as landfill or dredging spoils;
- vi. Commercial development of any nature;
- vii. Human introduction of non-native plant species which may compete with and result in decline or elimination of native plant species;
- viii. Human introduction of non-native animal species which may compete with and result in decline or elimination of native animal species;

- ix. Any other act which, in the opinion of the City, would be detrimental to the scenic beauty, wildlife habitat, wetlands, the natural beauty, or natural resources of the Real Property;
- x. Operation of motorized vehicles except as necessary in the use of the area as provided herein;
- xi. The broadcast application of pesticides at any time. Spot application of pesticides for the control of noxious weeds as provided by state law will be permitted;
- xii. Cultivation, planting, or drilling of row crops, small grains, and forages, such as alfalfa and forage sorghum;
- xiii. Removal of tree masses;
- xiv. Changing the hydrology of the Easement Area or the land upstream.

B. The term of this Conservation Easement will be in perpetuity unless earlier terminated pursuant to any of the following provisions:

- i. By the City pursuant to the provisions of Neb. Rev. Stat. § 76-2,113.
- ii. By the Lancaster County District Court pursuant to the provisions of Neb. Rev. Stat. § 76-2,114.

The parties agree that termination of this Agreement may be total and affect the entire Easement Area, or may be partial and result in the termination of the easement over only a portion of the Easement Area.

**2. Condition of the Real Property at Time of Grant.** The drainage-way within and flood storage capacity of the Easement Area without limiting the generality of the terms is defined to mean the condition of the Easement Area at the time of this grant as evidenced by reports, photographs and scientific documentation on file with the City's Planning Department.

**3. Protection and Maintenance of the Real Property.**

A. Owner agrees to pay any real estate taxes, estate taxes or assessments levied by competent authorities on the Easement Area, including but not limited to any tax or assessment affecting the easement granted herein. Owner further agrees to obtain, pay for, and continuously maintain liability and property insurance covering the Easement Area.

B. Owner shall cooperate with and assist the City at City's cost in applying for, obtaining, protecting, maintaining and enhancing any and all surface water and ground water rights and privileges related to the Easement Area by signing applications which the City deems necessary or desirable for the management, maintenance or development of the Easement Area for the purposes provided for herein.

C. Owner may, upon receipt of prior written approval from the City, remove dead branches and fallen limbs from trees in the drainage way.

**4. Inspections, Educational Use and Access by City.** The City shall have the right of reasonable ingress and egress to and from the Easement Area from public roads and streets and from adjacent properties for its employees, contractors, vehicles and equipment for the purpose of inspecting, maintaining, protecting the Easement Area as the City may deem necessary or desirable. The City shall further have the right to enter the Easement Area in groups of not more than three, unless larger groups are agreed to, at all reasonable times upon notification to Owner for the purpose of observing and studying nature and for the purpose of making scientific and educational observations and studies. Owner agrees that consent to entrance by groups of more than three shall not be unreasonably withheld. The City shall indemnify and hold Owner harmless of and from any damage to the Easement Area or to persons resulting from the entry of such groups (whether more or less than three) onto the Easement Area.

**5. Enforcement.** Owner agrees that the City may enforce the provisions of this Conservation Easement by any proceeding at law or in equity, including but not limited to, the right

to require restoration of the Easement Agreement Area to the condition at the time of this grant. Owner further agrees that the City may seek an injunction restraining any person from violating the terms of this Conservation Easement and that the City may be granted such injunction without posting of any bond whatsoever. Owner further agrees that the City does not waive or forfeit the right to take any action as it deems necessary to insure compliance with the covenants and purposes of this grant by any prior failure to act. Owner further agrees that should Owner undertake any activity requiring the approval of the City without or in advance of securing such approval, or undertake any activity in violation of the terms of this Conservation Easement that City shall have the right to enforce the restoration of that portion of the Easement Area affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the cost of such restoration and the City's cost of suit, including reasonable attorney fees, shall be paid by Owner.

6. **Title to Easement Area.** Owner covenants that Owner is the owner of marketable title to all of the Easement Area and have legal right, title and capacity to grant the Conservation Easement granted herein subject to easements and restrictions of record.

7. **Binding Affect.** The Conservation Easement granted herein shall run with the land and shall inure to the benefit of and be binding upon the successors and assigns of Owner and City.

8. **Recordation.** The parties agree that this Agreement shall be duly filed by the City with the Lancaster County Register of Deeds upon execution and acceptance by the City. Filing fees shall be paid in advance by the Owner.

9. **Severability.** If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Conservation Easement and the application of such provisions to persons or circumstances other than those to which it is found to be invalid shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

DOUG SCHMIDT CONSTRUCTION, Inc.  
a Nebraska corporation,

By: \_\_\_\_\_

President

Attest:

CITY OF LINCOLN, NEBRASKA

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_

Mayor

STATE OF NEBRASKA )

COUNTY OF LANCASTER )

) ss.

The foregoing instrument was acknowledged before me this 1 day of Oct, 2003, by Doug Schmidt, President of Doug Schmidt Construction Inc. a Nebraska corporation, Owner.



\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA )

COUNTY OF LANCASTER )

) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2003, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska on behalf of the City of Lincoln, Nebraska.

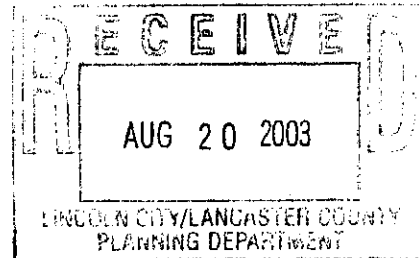
\_\_\_\_\_  
Notary Public

# S.W. 1ST STREET APARTMENTS

## **CONSERVATION EASEMENT** **LEGAL DESCRIPTION:**

A PORTION OF THE REMAINING PORTION OF LOT 1, FAIRWAY ADDITION, LOCATED IN THE SE QUARTER OF SECTION 27, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., LINCOLN, LANCASTER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH MOST CORNER OF SAID LOT 1; THENCE ON THE NORTHERLY LINE OF SAID LOT 1, ON AN ASSIGNED BEARING OF S 73°39'45"E A DISTANCE OF 217.90 FEET; THENCE CONTINUING ON SAID NORTHERLY LINE, S 57°33'59"E 80.83 FEET; THENCE S 90°00'00"W 265.59 FEET; THENCE S 54°00'00"W 102.69 FEET; THENCE ON THE WEST LINE OF SAID LOT 1, N 0°13'05"W 53.40 FEET, TO A POINT ON THE NORTHWESTERLY LINE OF SAID LOT 1; THENCE ON SAID NORTHWESTERLY LINE, N 32°39'43"E 132.57 FEET, TO THE POINT OF BEGINNING AND CONTAINING A CALCULATED AREA OF 22,960.62 S.F. OR 0.53 ACRES MORE OR LESS.



ATTACHMENT "A"